



County of Los Angeles CHIEF ADMINISTRATIVE OFFICE

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Third District

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Fifth District

June 24, 2005

To: Supervisor Gloria Molina, Chair
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

DEBARMENT GUIDELINES

On February 8, 2005, on the motion of Chairperson Molina and Supervisor Burke, your Board instructed this office, in conjunction with the County Counsel, and in consultation with affected contracting departments, to report back with recommendations for a standardized set of debarment term guidelines based on a best practices approach.

On March 7, 2005, your Board was provided with a status update on the progress made by the debarment guidelines workgroup made up of representatives from County Counsel, Auditor-Controller (A-C), Internal Services Department (ISD), Department of Public Works (DPW), Office of Affirmative Action Compliance (OAAC) and this office.

Our recommendations, as summarized below, establish standards to be used by the Contractor Hearing Board (CHB) members and your Board in making debarment determinations, including the length of the debarment period. These standards are based on a best practices survey of other jurisdictions that have enacted contractor debarment processes.

We are also recommending your Board increase the maximum time period the County may debar a contractor. Currently, the County's debarment Ordinance specifies the maximum length of debarment is three years. We are recommending the Ordinance be amended to provide the debarment period should generally not exceed five years, but the County may impose a longer period of debarment up to and including permanent debarment, where the County determines that such longer periods are justified.

Additionally, the workgroup recommends the Ordinance be amended to include a procedure that would allow a contractor who has been debarred for a period longer than five years to request, after the debarment has been in effect for at least five years, a reduction of the period or termination of the debarment based upon circumstances, such as change in ownership or management, elimination of the grounds for which the debarment was imposed, or material evidence discovered after the debarment was imposed.

These recommendations will be incorporated into an Ordinance amendment, and, unless otherwise directed, the CAO will submit the Ordinance amendment to the Board on an upcoming agenda.

In addition to the above recommendations, the workgroup is recommending the make-up of the CHB be changed to increase the pool of departments available to sit on the CHB. Currently, the CAO, ISD, OAAC, and DPW sit on the CHB. We recommend the Departments of Health Services, Parks and Recreation, and Public Social Services be available as alternates on the CHB. Finally, the workgroup is recommending a more senior level of management sit on the CHB.

Debarment Guidelines

Your Board adopted the County's debarment (and non-responsibility) Ordinance on January 11, 2000. The procedures and guidelines for making debarment determinations are outlined in Implementation Instructions that were issued by the Auditor-Controller. Under the existing debarment Ordinance, the County may debar a contractor, in its discretion, based upon the criteria established in the Ordinance, such as a contractor's acts or omissions which indicate a lack of business integrity. The debarment Ordinance also provides the County may consider, in addition to the seriousness of contractor's acts or omissions, relevant mitigating or aggravating factors in determining whether to debar a contractor and the period of debarment. The mitigating and aggravating factors are not set forth in the County's existing Ordinance.

Our recommendation, which will be reflected in an Ordinance amendment, provides 17 proposed examples of "mitigating and aggravating factors" to guide the County in exercising its discretion whether to debar a contractor (and/or find a contractor to be non-responsible), as well as the appropriate length of a debarment. The 17 factors are as follows:

1. The actual or potential harm or impact that result, or may result, from the wrongdoing.

2. The frequency and/or number of incidents, and/or duration of the wrongdoing.
3. Whether there is a pattern or prior history of wrongdoing.
4. A contractor's overall performance record. For example, the County may evaluate the contractor's activity cited as the basis for the debarment in the broader context of the contractor's overall performance history.
5. Whether a contractor is or has been debarred, found non-responsible, or disqualified by another public entity on a basis of conduct similar to one or more of the grounds for debarment specified in this section.
6. Whether a contractor's wrongdoing was intentional or inadvertent. For example, the County may consider whether and to what extent a contractor planned, initiated, or carried out the wrongdoing.
7. Whether a contractor has accepted responsibility for the wrongdoing, recognizes the seriousness of the misconduct that led to the grounds for debarment, and/or has taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.
8. Whether, and to what extent, a contractor has paid or agreed to pay criminal, civil, and administrative liabilities for the improper activity, and to what extent, if any, has the contractor made or agreed to make restitution.
9. Whether a contractor has cooperated fully with the County during the investigation, and any court or administrative action. In determining the extent of cooperation, the County may consider when the cooperation began and whether the contractor disclosed all pertinent information known to the contractor.
10. Whether the wrongdoing was pervasive within a contractor's organization.
11. The positions held by the individuals involved in the wrongdoing.
12. Whether a contractor's principals participated in, knew of, or tolerated the offense.
13. Whether a contractor brought the activity cited as a basis for the debarment to the attention of the County in a timely manner.

14. Whether a contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the County.
15. Whether a contractor had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.
16. Whether a contractor has taken appropriate disciplinary actions against the individuals responsible for the activity which constitutes the cause for debarment.
17. Other factors that are appropriate to the circumstances of a particular case.

In developing this recommendation, the workgroup reviewed the debarment processes of other jurisdictions. The above proposed factors are modeled after the debarment regulations adopted by the Federal government. The workgroup determined that the debarment regulations at the Federal level represent the best overall model for the County's debarment process. These factors provide the County with guidance to make appropriate findings to support debarment determinations, including the length of the debarment period.

Before making this recommendation, the workgroup considered amending the Ordinance to establish various defined time periods for debarment to correspond to a variety of specifically defined types of violations. However, we do not believe this approach would provide the County with sufficient flexibility and discretion to appropriately consider the unique circumstances of each case. The workgroup believes it may be helpful, however, for the County's Implementation Instructions to provide some examples of types of violations that potentially warrant a debarment, including appropriate periods of debarment (within a range). Should your Board approve the proposed recommendations to amend the Ordinance, we will revise the Implementation Instructions accordingly.

Period of Debarment/Permanent Debarment

The County's existing debarment Ordinance has a maximum three-year period of debarment. The three-year period was originally selected because it was consistent with debarment procedures used by a majority of jurisdictions. Following the Board's adoption of the County's debarment Ordinance, additional jurisdictions have enacted debarment processes. Three years remains the most commonly used maximum period for debarment; however, we have identified other jurisdictions that have authorized longer debarment periods, including permanent debarment. For example, the City of

San Diego and the Federal government have authorized the imposition of permanent debarment.

Our recommendation, which will be reflected in an Ordinance amendment, provides that generally, the debarment period should not exceed five years. It further provides, however, that the County retains the right to impose a longer period of debarment, including permanent debarment, where the County determines that such longer period of debarment is justified by the circumstances.

The Ordinance amendment will include the following standard to impose a debarment period longer than five years, up to and including permanent debarment:

The contractor's acts or omissions are of such an extremely serious nature that removal of the contractor from all future County contracting opportunities for the specified period is necessary to protect the County's interests.

Should your Board approve the proposed Ordinance amendment, we will revise the Implementation Instructions to provide examples of certain violations that may warrant the imposition of debarment periods longer than five years, including permanent debarment.

Review of Debarment Period

The workgroup is also recommending the Ordinance be amended to provide a procedure whereby a contractor who has been debarred for a period longer than five years may, after the debarment has been in effect for at least five years, request that the County review the debarment determination to reduce the debarment period or terminate the debarment. The County may consider a contractor's request based upon the following circumstances: (1) elimination of the grounds for which the debarment was imposed, (2) a bona fide change in ownership or management, (3) material evidence discovered after the debarment was imposed, or (4) any other reason that is in the best interests of the County.

The Contractor may make this request for a review to the CHB, and after a hearing, the CHB will prepare a proposed decision and recommendation for your Board. Your Board will have the right to modify, deny, or adopt the proposed decision and recommendation of the CHB. A reduction of the period or termination of the debarment becomes final upon approval by your Board.

Contractor Hearing Board – Departmental Representation

The CHB holds hearings on debarment recommendations brought by County departments and, in turn, makes recommendations to your Board on whether or not to debar a contractor and for how long. The CHB is currently made up of ISD, OAAC, DPW, and this office. County Counsel serves as legal advisor to the CHB. As a result of the increasing number of requests for debarment hearings from County departments, the workgroup believes there is a need to include more departments in this process to serve as alternates on the CHB, particularly in situations where one or more of the departmental representatives must recuse themselves when their department is bringing the debarment action. The workgroup proposes the Departments of Health Services, Parks and Recreation and Public Social Services be added to the CHB as alternate departments and the Implementation Instructions be updated to reflect this recommendation.

Further, the workgroup believes the CHB needs to reflect a more seasoned level of management. In order to exercise sound judgment and reach supportable conclusions that are consistent with your Board's direction regarding very complex and challenging debarment hearings, it is recommended that a minimum level of representation for CHB members be established at the Deputy Director/Bureau Chief level, or its equivalent. While these additional responsibilities as members of the CHB may prove to be challenging for the affected managers, debarment proceedings are of the utmost seriousness and require members possessing the appropriate experience and judgment. This recommendation would also be reflected with a revision to the Implementation Instructions.

Unless otherwise instructed, we will submit a proposed Ordinance amendment, which reflects our recommendations, for your Board's consideration on an upcoming Board agenda, and the Auditor-Controller will subsequently issue appropriately updated Implementation Instructions. If you have any questions, please let me know, or your staff can contact Vincent Amerson of this office at (213) 974-1168, or at vamerson@cao.co.la.ca.us.

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c: All Department Heads